

Confidentiality and Program Integrity

Section 16 Update Guide

September 29, 2017 Renamed *Section 16*. It is now *Confidentiality and Program Integrity* since the section's content covers a range of ethical issues related to confidentiality and program integrity.

Clarified information on the following topics:

- Disclosure of eligibility information
- Program integrity and internal controls

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Contact Information for the

Texas Department of Agriculture (TDA), Food and Nutrition

When contacting TDA by phone, Contracting Entities (CEs) need to have their CE Identification Number (CE ID) (and site ID, if applicable). CEs should include their name and CE ID (and site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address: 1700 N. Congress, 11th Floor, Austin, TX 78701

Mailing Address: PO Box 12847, Austin, TX 78711-2847

Phone: 877-TEXMEAL, (877) 839 -6985

Fax: (888) 203-6593

Email Contact: squaremeals@TexasAgriculture.gov

Website: www.squaremeals.org

Email Contact for Issues Related to Applications

Child & Adult Care Food Program: CACFP.BOps@TexasAgriculture.gov

Fresh Fruit & Vegetable Program: FFVP.Bops@TexasAgriculture.gov

*National School Lunch Program, School Breakfast Program,
& Special Milk Program:* NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option: SSO.BOps@TexasAgriculture.gov

Summer Food Service Program: SFSP.BOps@TexasAgriculture.gov

Email Contact for Issues Related to Program Operation:

Commodity Operations: CommodityOperations@TexasAgriculture.gov

*Community Operations (Child & Adult Care Food Program
& Summer Food Service Program):* Commuinty.Ops@TexasAgriculture.gov

Local Products: LocalProducts.SquareMeals@TexasAgriculture.gov

Procurement, Including Sole Source: CE.ProcurementReviews.BOps@TexasAgriculture.gov

*School Operations (National School Lunch Program, School
Breakfast Program, & Special Milk Program):* School.Operations@TexasAgriculture.gov

TX-UNPS Direct Certification Direct Verification System DirectCertification@TexasAgriculture.gov

Email Contact for CE Flexibility Options

Breakfast Waiver: SNPWaivers@TexasAgriculture.gov

Gender Exception: SNPWaivers@TexasAgriculture.gov

Grains Exemption: Nutrition@TexasAgriculture.gov

Milk Exemption: Nutrition@TexasAgriculture.gov

Milk Substitute Notification: Nutrition@TexasAgriculture.gov

Paid Lunch Equity (PLE) Exemption: SNPWaivers@TexasAgriculture.gov

RCCI Age/Grade Group Meal Pattern Flexibility School.Operations@TexasAgriculture.gov

Seamless Summer Operation (SSO) Age/Grade: Flexibility: SNPWaivers@TexasAgriculture.gov

Summer Mandate: SNPWaivers@TexasAgriculture.gov

Confidentiality and Program Integrity

School Nutrition Programs (SNPs) are designed and funded to provide nutritional meals to students. Contracting entities (CEs) and CE staff are expected to operate these programs in a manner that promotes program integrity and ensures that confidential information is protected.

Guidance in the following *Administrator’s Reference Manual* sections will also assist the CE in promoting program integrity and protecting confidential information:

- *Section 2, Application and Agreement*
- *Section 4, Determining Eligibility*
- *Section 7, Counting and Claiming*
- *Section 14, Financial Information Concerning School Nutrition Funds*
- *Section 17, Procurement*
- *Section 19, Other Operational Issues*
- *Section 22, Food Service Contracts*
- *Section 23, Administrative Review*
- *Section 25, Professional Standards*

Definitions for This Section

For this section, the following definitions provide information that may assist CEs:

	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other’s control or dominant influence, and the transaction is treated with fairness, integrity, and legality.
<i>Arms-Length Transaction</i>	<i>Less than Arms-Length Transaction</i> <i>A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.</i>
<i>Breach of Ethics</i>	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee’s duties.

<i>Code of Conduct</i>	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: <ol style="list-style-type: none"> 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
<i>Conflict of Interest</i>	Any action that allows a person to benefit at the expense of the public interest or the expense of their employer.
<i>Ethics</i>	Principles of conduct governing and guiding an individual or a group.
<i>Incentives</i>	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
<i>Internal Controls</i>	Processes or procedures established by the CE that (1) define actions related to the procurement process, (2) establish standards of ethical conduct, and (3) provide full and open competition.
<i>Procedures and Policies</i>	Processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take related to specific events or financial transactions.
<i>Procurement</i>	Act of obtaining of goods or services in exchange for money or value. <small>[NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]</small>
<i>Program Integrity</i>	An organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. <small>[NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]</small>
<i>Tangible Benefit</i>	A special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
<i>Value</i>	Something of monetary or material worth or something that has usefulness that can be exchanged for something of worth, merit, or importance.

Confidential Information

The issues of confidentiality and privacy of personal data are complicated and sensitive. Before developing local disclosure policies, CEs should discuss the issue with their attorney. Local policy may include requirements for a Memorandum of Agreement when data is shared with agencies that do not include federal, state, or local agencies evaluating or reviewing Child Nutrition Program operations or the Comptroller General.

All CE staff must carefully protect confidential information for all program participants and their families. CEs should have written processes or procedures for protecting private information provided by households.

Guidelines for Disclosure to Specific Agencies

CEs may use the *Disclosure Chart* to help determine what information can be released to a specific type of agency.

For Example: Using the chart to help determine what information can be released, the CE discloses information on eligibility status to a federal education program without parental consent. If the same program requests household size, CEs must obtain consent prior to disclosure.

Disclosure Chart	
CE may disclose eligibility status information without parent consent.	
All Eligibility Information	Eligibility Status Only
<ul style="list-style-type: none"> • Other USDA Child Nutrition Programs (CNPs) • Comptroller General of the United States for purposes of audit and examination • Federal Communications Commission (FCC) auditors conducting E-audit • Federal, state, or local law enforcement officials investigating alleged violations of any of the CNPs or investigating violations of any of the programs that are authorized to have access to names and eligibility status 	<ul style="list-style-type: none"> • State health program other than Medicaid/SCHIP, administered by a state agency or local education agency • Federal education programs • Federal, state, or local means tested nutrition programs with comparable eligibility standard • State education programs administered by state agency or local education agencies
CE may disclose eligibility information with prior parent notice with the parent given the opportunity to decline the release of information.	
All Eligibility Information	
<ul style="list-style-type: none"> • Medicaid or the State Children’s Health Insurance Program (SCHIP), administered by a state or local agency authorized under Titles XIX or XXI of the Social Security Act to identify and enroll eligible students 	
CE may disclose eligibility information with parent consent.	
Only Eligibility Status Information	
<ul style="list-style-type: none"> • Federal health programs other than Medicaid/SCHIP • Local education programs • Local health program 	

CEs should provide information to following agencies that commonly request disclosure according to the guidelines described:

Aggregate Data

The school nutrition department may disclose aggregate data to any program or individual when students cannot be identified through release of the aggregate data or by means of deduction. An example of aggregate data is the number of students eligible for free or reduced-price meals in a school district when the school district is large enough to prevent identification through deduction. As aggregate data, this information does not identify individual students; therefore, parental notification and parental consent are not needed.

Family Educational Rights and Privacy Act (FERPA)

The U.S. Department of Education has established that educational records must be guided by the Family Educational Rights and Privacy (FERPA). SNPs are not governed by FERPA. However, any information that the CE provides to educational officials is regulated by FERPA.

For Example: A school nutrition department provides eligibility status information to the local school district so that the district can take advantage of a special program for students from low income households. The information the school district receives must follow FERPA guidelines even though the school nutrition department is not governed by FERPA requirements.

Federal Communications Commission (FCC) E-Rate Audits

The FCC, through the Universal Service Administrative Company (USAC), administers the E-Rate program. The USAC provides discounts to schools to obtain affordable telecommunication and Internet access. The discount rates are based on the percentage of students who are approved for free and reduced-price school meals. The USAC has contracted with private firms to conduct audits of the discount rates given to schools. These auditors are bound by disclosure of confidentiality requirements; they cannot share or otherwise release individual information. The release of information regarding students eligible for free and reduced-price meals and household school meal applications to auditors is permitted.

USDA has worked with the FCC to ensure that its audit protocols comply with the requirements of the NSLA. CEs may share individual students' information with authorized FCC auditors as long as the following audit procedures are used for the following purposes:

- Compare aggregate enrollment data with aggregate free and reduced-price eligibility data.
- For a small sample of eligible students, request their household school meal applications which may include direct certification records.
- Confirm that a household school meal application or other documentation exists for each selected student.
- Prohibit auditors from retaining personal student identification.

FCC auditors cannot verify the accuracy of the CE's determinations, conduct verification of household school meal applications, and cannot contact the household or other sources (such as assistance agencies or employers) to confirm the information on the household school meal application. CEs may redact (remove or black out) all information from the household school meal application that does not show that the student has an approved household school meal application or other documentation on file.

For Example: If the student is identified by her or his student number, the CE could redact the student's name, address, etc. as long as the student number and approved eligibility status were visible.

Auditors may perform the following tasks:

- Ensure the information on the household school meal application was accurately processed, that the income and the number of persons in the household were totaled correctly and the appropriate IEGs were used.
- Confirm that the students listed on rosters¹ as eligible for free or reduced-price meals have approved household school meal applications on file or have been determined to be categorically eligible.
- Confirm that the number of students used for statistical purposes is based on approved household school meal applications.

Any discrepancies in the above areas must be brought to the attention of the CE.

¹ See *Information Box 3, Carryover Eligibility* for more information on master lists and rosters.

Federal Education Programs

CE officials may disclose a student's eligibility status to individuals who are directly connected with and who have a need to know in order to administer and enforce federal education program requirements. However, other information obtained from the free and reduced-price household school meal application or through direct certification cannot be disclosed. CEs must establish procedures that limit access to a student's eligibility status to as few individuals as possible—i.e., only those who need to know.

National Assessment of Educational Progress (NAEP)

CEs may disclose, without parent or guardian consent, students' names and eligibility status to persons who are directly connected to the administration or enforcement of NAEP because NAEP is a federal education program. The term *persons directly connected* for the purpose of disclosure to NAEP includes federal, state, and local program operators responsible for NAEP program administration or program compliance and their contractors.

This does not imply that these individuals have routine access to participants' eligibility status. There must be a *need to know* related to the administration or enforcement of a federal education program or for legitimate NAEP purposes. However, even though CEs may disclose information to NAEP programs without parent or guardian consent, CEs are encouraged to inform households when they plan to disclose or use eligibility information outside the originating program and to have a written agreement with NAEP officials.²

NAEP State Assessment Programs

Additionally, CEs may disclose students' names and eligibility status to persons directly connected with the administration or enforcement of state educational assessment programs to the extent that the state assessment is part of the NAEP or the assessment program is established at the state, not the local, level.

Need to Know

CEs may disclose students' eligibility status only to persons determined to be *directly connected* with the administration or enforcement of a federal education program, state education program, state health program, or a means-tested nutrition program, as well as to persons directly connected with the Comptroller General Office or law enforcement for an authorized activity.

² See the *Memorandum of Agreement Regarding Disclosure* subsection in this section for more information on a written agreement.

Although a program or person may be authorized under the NSLA to receive free and reduced-price eligibility information, there must be a legitimate *need to know* to provide a service or carry out an authorized activity.

For Example: Medicaid and CHIP agencies and health insurance program operators receiving students' free and reduced-price meal eligibility information must use that information only to enroll eligible students in Medicaid or CHIP.

State agencies, local education agencies (LEAs), and schools must ensure that data systems, records, and other means of accessing a student's eligibility status are limited to officials directly connected with administration or enforcement of a federal or state program activity. This includes federal, state, or local program operations responsible for ongoing operation of the program or activity, or responsible for program compliance. Eligibility information cannot be made available to all school officials as a general practice.

For Example: A teacher who is directly responsible for the administration of a federal education program (e.g., providing tutorial or other assistance under NCLB for students with high economic need) is given limited access to information necessary to provide services. Other staff who are not providing such assistance under appropriate statutory or regulatory requirement cannot have access. Web-based data systems must have masking or de-identification capability to prevent unauthorized access to free or reduced-price eligibility status.

Other Child Nutrition Programs

The CE may disclose all eligibility information from a household's free and reduced price meal application or information obtained through direct certification to persons directly connected with the administration or enforcement of the programs authorized under the Child Nutrition Programs. This includes NSLP, SBP, School Milk Program (SMP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and Women, Infants, and Children (WIC) Food and Nutrition Service.

This means that program eligibility information collected for any one of the CNPs may be shared with another CNP, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced price school meal applications, without household consent, to an SFSP administered by a parks and recreation agency.

Other Federal or State Means-Tested Programs

Without household consent, a CE may only disclose only a child's name and eligibility status to person directly connected to other Federal or State means tested programs. Disclosure of other information, such as a parent or guardian's name and address, requires household notification and consent.

The CE may include a disclosure statement to inform household about information to be disclosed in the letter sent to households at the beginning of the year, the household school meal application, or other notification documentation.

In all cases, the receiving entity that is given disclosed information must be informed in writing of the following:

- Eligibility information may only be used for the purpose for which the disclosure was made.
- Further use or disclosure to other parties is prohibited.
- A violation of federal law or USDA regulations restricting disclosure may result in a fine of not more than \$1000 or imprisonment of not more than 1 year, or both.

Other State Education Programs

Other state education programs also are eligible to have access to participants' names and eligibility status, without parent or guardian consent, but the program must be established at the state, not the local, level.

Memorandum of Agreement Regarding Disclosure

Prior to disclosing information on the eligibility of individual students, CE officials should enter into a memorandum of agreement (or memorandum of understanding).

Education Agencies

For disclosure for education purposes, the CE and the receiving agency have an agreement that includes the following:

1. Specify the names of the individuals who would have access to the information
2. Provide an explanation of how the information would be used in implementing No Child Left Behind (NCLB), Elementary and Secondary Education Act (ESEA)
3. Provide an explanation of how the information will be protected from unauthorized uses and third-party disclosures
4. Provide a statement of the penalties for misuse of the information³

³ In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

Medicaid/SCHIP Agencies

For any disclosures to Medicaid or CHIP, the CE and receiving agency have an agreement that includes the following information:

1. Health insurance program or health agency receiving student's eligibility information
2. Description of the information that will be disclosed, specifying that the information must only be used to seek to enroll students in Medicaid or CHIP
3. The way the information will be used and how it will be protected from unauthorized uses and disclosures
4. Penalties for unauthorized disclosure
5. Signature of a CE official (also called *determining agency*) and the Medicaid/CHIP program or agency receiving the students' eligibility information

Other Entities

For any disclosures to other entities, including NAEP, the CE and receiving agency have an agreement that includes the following:

- Signatures of authorized representatives for the CE and receiving entity
- Identification of the entity receiving the information
- Description of the information to be disclosed and how it will be used
- Description of how the information will be protected from unauthorized use and disclosure
- Description the penalties for unauthorized disclosure

Notice of Disclosure

The notice of either potential or specific disclosure must be given to parents or guardians prior to disclosure and with a reasonable time limit for parents or guardians to elect not to have their students' information disclosed. CEs may incorporate potential disclosures or specific disclosure descriptions into documents that regularly go out to households.

For Example: The notice of potential disclosure or specific disclosure may be provided as follows:

- *In the letter to households that accompanies the free and reduced-price household school meal application*
- *In the letter informing parents/guardians of their students' eligibility for free meals through direct certification*
- *In the multi-student/multi-use household school meal application*

The notification of potential disclosure or specific disclosure to parents or guardians must include the following:

- An explanation that information will be used by other federal, state, or local agencies as authorized by the National School Lunch Act (A list of specific programs is not necessary.)
- A list of the information that may be disclosed, including students' names, eligibility status, or other information obtained through the household school meal application or direct certification
- A statement about their right to refuse consent to the disclosure
- An explanation that the information will be used to facilitate the enrollment of eligible students in a health insurance program or other programs
- A statement that their decision will not affect their students' eligibility for free and reduced-price meals

Consent Statement Requirements

If the disclosure of data requires parental or guardian consent, the consent statement must be in writing. It may be obtained at the time of household school meal application, or at a later time. Parental consent to release information must be obtained each school year; consent forms cannot be extended from one school year to the next.

The consent statement must describe the following actions:

- Identify the information that will be shared and how the information will be used
- Be signed, dated, and signed by the parent or guardian of the applicant household, even though the household school meal application for free and reduced-price meals may be signed by any adult household member
- State that failing to sign the consent statement will not affect eligibility for or participation in the program and that the information will not be shared by the receiving program with any other entity or program
- Enable the parent/guardian/adult to limit consent to only those programs with which he or she wishes to share information

For Example: The consent statement could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for program benefits from a specific program.

Parent Not Living in the Student's Household and Noncustodial Parents

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has split or joint custody.

For Example: A father shares joint custody with the children's mother but believes that the mother has misrepresented household circumstances and that the children are not eligible for reduced price meals. The father asks to see the application submitted by the mother, so he can see if the form contains accurate information.

CEs are not permitted to release eligibility information contained on a household application to a parent who does not live in the student's household without written permission from the person who signed the application. If there is any question about releasing eligibility information for custody or divorce actions, local officials should consult their attorney before releasing eligibility information. The sole exception would be under a court order or subpoena; an attorney's request would not be a sufficient justification for the release of the application data. CEs should consult with their attorney to determine if disclosure may be required.

Program Integrity

Program integrity is defined *as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds*. This type of financial management system provides safeguards that improve the stewardship of program income and costs and reduces fraud and improper payments by the use of internal controls.

CEs must have procedures (and/or policies) in place to encourage and support program integrity that establishes ethical standards for the operation and management of Child Nutrition Programs (CNPs). These procedures must ensure that CE personnel do not circumvent federal and state regulations—no matter the reason, well intentioned or fraudulent.

For this section, the term *procedure* is used to refer to processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take.

These procedures (1) guide staff by defining the roles and responsibilities for all involved and (2) address the code of conduct that governs the performance of the CE's employees, officers, and agents as required by local, state, and federal regulations.

Those Who Act on Behalf of the CE

A CE is expected to communicate its expectations and applicable procedures related to program integrity to any agency, organization, group, business, food service management company, food processor, contractor, distributor, vendor, or other entity acting on the CE's behalf.⁴ This information must be included in solicitations, agreements, contracts, and other communications as appropriate.

CEs may have a set of overarching procedures at the CE level and more detailed procedures at the site level. Or, they may have a single set of procedures that are applied at all levels. CEs may include plans for actions specific to topics or schedules with timelines and tasks by type of event or transaction, or type of service as a separate document or incorporate it into their written procedures.

⁴ See the *Definitions* subsection in this section for additional information on this topic.

To foster program integrity in written procedures, the CE must include internal controls that

1. establish and maintain effective oversight over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award⁵ and
2. establish and maintain effective oversight over that define actions related to the procurement process, establish standards of ethical conduct for procurement actions, and provide full and open competition in all procurement actions.⁶

The following must be addressed in a CE's procedures to promote program integrity and establish internal controls:

Financial Management System

School Nutrition Program (SNP) accounts are required to comply with generally accepted accounting principles (GAAP) for federally funded programs which includes compliance with the *Standards for Internal Control in the Federal Government*⁷ issued by the Comptroller General of the United States or the *Internal Control Integrated Framework*⁸ issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In Texas, CEs must also apply all local and state financial and accounting requirements that are not in conflict with USDA regulations. This includes, but is not limited to, Texas Education Agency (TEA) regulations which apply to school districts and charter schools.

The CE's procedures must demonstrate how the CE incorporates (1) these requirements into its financial management system and (2) the roles and responsibilities of staff in maintaining internal controls.

⁵ See *Administrator's Reference Manual (ARM), Section 14, Financial Information Concerning School Nutrition Funds* for additional information on this topic

⁶ Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as *free and open competition*. See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on this topic.

⁷ Available at www.gao.gov/products/gao-14-704G

⁸ Available at www.coso.org

Real or Apparent Conflict of Interest

A real or apparent conflict of interest occurs when any action allows an individual to receive a benefit at the expense of the public interest or the expense of their employer.

When the following individuals are involved in procurement,

- CE employee
- CE officer
- Agent acting on the CE's behalf
- Any member of the immediate family of the CE employee, CE officer, or agent acting on the CE's behalf
- Business partner of the CE employee, CE officer, or agent acting on CE's behalf

there is a conflict of interest in the following situations.

- Who has a financial or other interest in a business being considered for a contract.
- Who may receive a tangible personal benefit from a business being considered for a contract.
- Who has a personal or friendship relationship with a business being considered for a contract.
- Who is employed by, about to be employed by, or is seeking employment from a business being considered for a contract.

[NOTE: A tangible benefit includes a special offer for a particular item in order to incentivize a purchase. This includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.]

When there is a conflict of interest, the employee, officer, or agent cannot participate in the selection, award, or administration of a contract supported by federal funds.

Affiliated or Subsidiary Associations

If the CE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the CE must also maintain written standards of conduct covering organizational conflicts of interest. The CE's written procedure must provide an explanation of how it will avoid any conflicts of interest based on affiliated or subsidiary associations. This includes addressing situations where the CE or entity acting on behalf of the CE is unable, or appears to be unable, to be impartial in conducting a procurement action involving a related organization.

Incentives, Gratuities, or Kickbacks

CE employees; CE officials; agents acting on the CE's behalf; any member of the immediate family of the CE employee, CE officer, or agent acting on the CE's behalf; or business partner of the CE employee, CE officer, or agent acting on CE's behalf cannot accept anything of value from a vendor. Incentive, gratuities, or kickbacks include, but are not limited to,

personal gifts or gratuities that may be construed to have been given to influence the purchasing process.

Although such practices may be accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law. *Gift to a Public Servant* is a Class A misdemeanor offense if the recipient is a government employee who exercises some influence in the purchasing process of the governmental body.

A CE employee or former employee must not knowingly use confidential SNP information for the actual or anticipated personal benefit or benefit for any person or entity.

In its written procedures, the CE must provide an explanation of how it will treat situations where individuals receive incentives, gratuities, or kickbacks for financial transactions which includes the following elements:

- Disciplinary actions to be applied for violations of such standards by CE employees, CE officers, or agents acting on the CE's behalf.
- Guidance on how to avoid undue influence.
- Method for an individual to disclose in writing any possible situations where there is an appearance of incentives, gratuities, or kickbacks being received.⁹

In its written procedures, the CE must address how individuals will avoid real or apparent conflicts of interest which include the following elements:

- Disciplinary actions to be applied for violations of such standards by CE employees, CE officers, or agents action on the CE's behalf.
- Guidance on how to avoid undue influence.
- Method for an individual to disclose in writing any potential conflict of interest.¹⁰

[NOTE: CEs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

For Example: Nominal value is commonly defined as the cost of cup of coffee.]

⁹ The Texas Education Agency has additional requirements related to proper disclosure. These requirements are not in conflict with USDA regulations. The Texas Education Agency (TEA) requires that school districts and charter schools use *Form 1295, Certificate of Interested Parties* for this purpose. CEs may include the use of this form to address potential conflicts of interest in SNP procurement.

¹⁰ The Texas Education Agency has additional requirements related to proper disclosure. These requirements are not in conflict with USDA regulations. The Texas Education Agency (TEA) requires that school districts and charter schools use *Form 1295, Certificate of Interested Parties* for this purpose. CEs may include the use of this form to address potential conflicts of interest in SNP procurement.

If the CE has a question about whether a specific situation is a conflict of interest, the CE should consult with their attorney.

Benefits Received

CE employees; CE officials; agents acting on the CE's behalf; any member of the immediate family of the CE employee, CE officer, or agent acting on the CE's behalf; or business partner of the CE employee, CE officer, or agent acting on CE's behalf must not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

When incentives are offered by the contractor and accepted by an individual, the incentive must become the property of the SNP. Under no condition can the incentive become the property of an individual.

The CE's written procedure must provide an explanation of how it will avoid unallowable practices based on benefits received.

[NOTE: CEs should also remember that incentives may result in higher prices, lower quality, or both and that special prices are sometimes offered on old merchandise that the contractor wants to move.]

Certification Regarding Lobbying

Lobbying certification requirements are applicable to grants, subgrants, cooperative agreements, and contracts exceeding \$100,000 in federal funds. CEs must have procedures in place that describes how this requirement will be met which include, but are not limited to, the following:

- Documentation: Actions taken to ensure that the proper documentation is prepared, shared as required, and retained.¹¹
- Use of Funds: Statement that federal funds must not be paid by or behalf of the CE to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

¹¹ See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on this topic.

Debarment and Suspension

CEs and their subcontractors must not make or permit any award, subaward, subgrant, or contract with an individual or entity that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

In its written procedures, the CE must define how it will obtain a debarment and suspension certification from each of its contracts.

The CE may use any of the following actions to accomplish this purpose:

- Include the following debarment and suspension certification in the written agreement with the subcontractor:
{Enter name of subcontracting organization} certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency or by the State of Texas. {Enter name of subcontracting organization} shall immediately provide written notice to {Enter name of CE} if at any time the {Enter name of subcontracting organization} learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. {Enter name of CE} may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous.
- Require the subcontractor to sign and submit the TDA form entitled *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts (H2048)*¹² and maintain the signed form with its contract record.
- Print the page from the System for Award Management which indicates the subcontractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and maintaining that document on file with the contract documents. The System for Award Management can be accessed at www.sam.gov/portal/SAM/#1.

Staff Purchase of Items on the CE's Contract

When an individual takes advantage of SNP procurement by purchasing off an awarded contract, the individual is actually accepting the cash difference between the bid or discount price and the amount the individual would have paid for the item in the regular retail market. This is a financial incentive.

¹² Available at www.squaremeals.org

When an individual pays for the purchase, the payment does not remove the financial incentive. Even if the contractor were to charge retail price, the individual would still be receiving the convenience of a personal delivery and would be accepting a favor from the contractor—therefore, this is an unallowable practice.

The CE must address staff purchases from CE contracts in its written procedures.

Contracting with Persons and Companies for Assistance in Developing a Solicitation

When acquiring goods and services, contracting entities (CEs) may contract with agents or companies that provide technical information in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents.¹³

Potential Offerors or Interested Parties Involved in Developing a Solicitation

A potential contractor or other interested party cannot submit an offer when the potential contractor or other interested party assisted with or drafted the procurement specifications and/or technical requirements, procedures, or documents.

For Example: If a food service management company (FSMC) provides a cycle menu to be included in a solicitation, the FSMC cannot submit an offer for the contract.

If a potential consultant contractor writes a job description for the scope of work to be included in the solicitation, the consultant cannot submit an offer for the contract.

A CE's procedures must address when and how it will use agents or companies to assist them in developing solicitations.

Food Taken From Schools

No food, not even leftover food (including milk), can be taken from the premises by CE employees or CE officials for personal use, personal gain, or benefit to another person or entity.

A CE must address the issue of food taken from schools in their written procedures.

¹³ See the *Potential Offerors or Interested Parties Involved in Developing a Solicitation* subtopic in the *Written Procurement Procedures* subsection in this section for additional information on requirements related to this assistance.

Resources

CEs may find the following resources helpful in establishing procedures for program integrity:

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at www.comptroller.texas.gov/

Resources include the following:

- *Model Purchasing Manual for Texas Cities and Counties 2010* which includes information that applies to all governmental entities including schools. Available at www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf
- *State of Texas Contract Management Guide* which provides guidance and recommendations on improving existing contract management processes and practices. Available at www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php

Texas Education Agency (TEA)

Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 3, Purchasing, for local education agencies and charter schools. Available at

www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at www.fns.usda.gov/es/node/73141

Record Retention

The CE is required to maintain records for all program operations including procedures and processes related to program integrity and confidentiality. Records related to program integrity and confidentiality will include documentation related to all operational issues, including, but not limited to, eligibility, verification, financial management, and procurement. CEs have the option to maintain records on paper or electronically.

These records must be accessible to appropriate CE staff

Information Box 1

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

members and federal or state reviewers. TDA may request documentation related to program integrity and confidentiality during both offsite and onsite administrative review processes as well as reviews specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance. CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

Penalties for Misuse of Information or Improper Disclosure

The National School Lunch Act (NSLA) establishes a fine of not more than \$1,000 or imprisonment of not more than one (1) year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by federal law, any eligibility information. This includes the disclosure of eligibility information by one entity authorized under the NSLA to receive the information to any other entity, even if that entity would otherwise be authorized to receive the information directly from the CE.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law — fraud, bribery, or gratuity.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is \$25,000.

Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.